

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

BARBARA A. MCINTYRE,)	
)	
Plaintiff)	
)	Civil Docket No.: 1:14-CV-83-JCN
v.)	
)	
AFFILIATED LABORATORY, INC.,)	
et al.)	
)	
Defendants)	

PLAINTIFF'S MOTION *IN LIMINE* REGARDING CERTAIN EVIDENTIARY ISSUES

Plaintiff moves *in limine* to exclude 1) Ms. McIntyre's Social Security records, and the testimonial evidence that Plaintiff applied for and received Social Security disability benefits; and 2) unemployment records, and testimony concerning Ms. McIntyre's application for, and receipt of, unemployment benefits.

Social Security Disability

Documents relating to Social Security Disability (SSD) benefits have little relevance, as the definition of a disability to qualify for Social Security benefits is different from the definition of disability under the Maine Human Rights Act (MHRA). To be protected under the MHRA, a person has to be a "qualified individual with a disability," which is defined as "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S. § 4553(8-D). That definition is analogous to the language in the Americans with Disabilities Act (ADA). The U.S. Supreme Court discussed the distinctions between the ADA and the Social Security definitions of disability at length in *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795 (1999). In *Cleveland*, the Court noted that, unlike the ADA, "when the SSA

determines whether an individual is disabled, for SSDI purposes, it does not take the possibility of ‘reasonable accommodation’ into account, nor need an applicant refer to the possibility of reasonable accommodation when she applies for SSDI.” *Id.* at 803. The fact that Ms. McIntyre claims that she would be able to perform the essential functions of her job with reasonable accommodations is not inconsistent with her claim for Social Security benefits.

The fact that Ms. McIntyre has applied for, and received, SSD benefits is not relevant to the issues of liability or compensatory damages, which are issues to be decided by the jury. Back pay and front pay are equitable remedies to be determined by the Court subsequent to the jury trial. Since the jury does not award back pay or front pay, the receipt of evidence relating to SSD benefits would unnecessarily confuse the jury as to the issues for its decision and may mislead the jury into believing that it should award reduced compensatory or punitive damages because the Ms. McIntyre received disability benefits. Moreover, at least as to Plaintiff’s claim under the Maine Human Rights Act, the receipt of SSD benefits is inadmissible when it comes to the award of back pay or front pay. The Law Court has applied the collateral source rule to employment discrimination cases. *See, e.g. Maine Human Rights Comm. v. Department of Corrections*, 474 A.2d 860 (Me. 1984) (holding that the back pay award to the victim of unlawful employment discrimination should not be reduced by unemployment compensation benefits due to the collateral source rule).

Accordingly, evidence relating to Ms. McIntyre’s Social Security records, and the testimonial evidence that Plaintiff applied for and received Social Security disability benefits, should be excluded.

Unemployment Compensation

Ms. McIntyre received unemployment benefits after she had been terminated by Defendant. Unemployment benefits are a collateral source which cannot be deducted from a back pay award. *See id.* As these benefits would not even be considered by this Court post-trial when determining back pay, injection of this issue before the jury when the only issues before it are the reasons for discharge and damages, would be irrelevant and inappropriate. Accordingly, unemployment records, and testimony concerning Ms. McIntyre's application for, and receipt of, unemployment benefits should be excluded.

Dated: December 11, 2015

/s/ Erik M. P. Black

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CERTIFICATE OF SERVICE

I, Erik M. P. Black, Esq., attorney for Plaintiff, hereby certify that on this date I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to all registered participants.

Dated: December 11, 2015

/s/ Erik M. P. Black

Erik M. P. Black, Esq.

Attorney for Plaintiff